

CADES SCHUTTE LLP

PHILIP J. LEAS 1467-0
CARYN H. OKINAGA 7990-0
SEAN M. SMITH 9210-0
1000 Bishop Street, Suite 1200
Honolulu, HI 96813-4212
Telephone: (808) 521-9328
Facsimile: (808) 540-5056
email: pleas@cades.com

Attorneys for Defendant/Counterclaim Plaintiff
GCP MANAGEMENT, LLC and Defendant
GATEWAY CAPITAL PARTNERS, LLC

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JAMES RICHARD McCARTY and
VICTORIA L. McCARTY,

Plaintiffs,

vs.

GCP MANAGEMENT, LLC, a Utah
Limited Liability Company,
GATEWAY CAPITAL PARTNERS,
JOHN DOES 1-10, and DOE
ENTITIES 1-10,

Defendants.

GCP MANAGEMENT, LLC,

Counterclaim Plaintiff,

vs.

JAMES RICHARD MCCARTY,
VICTORIA L. McCARTY,

Counterclaim Defendants.

CIVIL NO. CV10-00133 JMS/KSC

**FINDINGS AND
RECOMMENDATION THAT
DEFENDANT/COUNTERCLAIM
PLAINTIFF GCP
MANAGEMENT, LLC'S
MOTION FOR CONFIRMATION
OF SALE, FOR DEFICIENCY
JUDGMENT, AND FOR WRIT
OF POSSESSION BE GRANTED;
EXHIBIT A**

**FINDINGS AND RECOMMENDATION THAT
DEFENDANT/COUNTERCLAIM PLAINTIFF GCP
MANAGEMENT, LLC'S MOTION FOR CONFIRMATION OF
SALE, FOR DEFICIENCY JUDGMENT, AND FOR WRIT OF
POSSESSION BE GRANTED**

Defendant/Counterclaim Plaintiff GCP Management, LLC's ("***Defendant***") Motion for Confirmation of Sale, For Deficiency Judgment, and for Writ of Possession (the "***Motion***"), was heard on April 7, 2011. Phillip J. Leas and Sean M. Smith appeared for GCP. James Richard McCarty appeared for himself and Victoria L. McCarty ("***Plaintiffs***"). Foreclosure commissioner Gary Robert (the "***Commissioner***") was also present.

Based on the Commissioner's report of the sale of the mortgaged property, the memoranda, declarations, and exhibits filed herein and the arguments presented in court, the Court hereby makes the following findings and recommendations:

1. The Commissioner's sale of the mortgaged property, being the fee simple interest in all that certain real property situate at TMK (2) 4-1-2-8, and more fully described in Exhibit A attached hereto, (the "***Property***"), was conducted pursuant to and in accordance with the decree of foreclosure filed herein.
2. The Commissioner has deemed GCP's winning bid of \$1,500,000.00 to be fair and reasonable and recommended confirmation of the sale.
3. The Commissioner is a neutral third party.
4. Plaintiffs have presented no credible evidence that GCP's bid is "so grossly inadequate as to shock the conscience."

5. The Court therefore finds that the GCP's bid is fair, equitable, and as high as any that can be obtained under the circumstances, it being noted that the Commissioner called for interested bidders at the hearing and outside the courtroom and the Court made the opportunity for reopening the bidding at the hearing, and no interested bidders came forward.

6. The Court finds that there is no reason to delay transfer of title and possession of the property to GCP or its nominee.

7. The Court further finds that Plaintiffs owe the following to GCP:

A. Principal, interest, late charges, and advances as follows:

Principal	\$2,721,071.74
Interest to maturity	\$83,142.11
Late charges	\$280,421.30
Default interest (8/20/09-4/07/11)	<u>\$1,106,134.40</u>
TOTAL	\$4,190,769.55

B. Additional default interest at \$1,863.75 per day after April 7, 2011, to the date of entry of the deficiency judgment.

C. Attorneys fees in the amount of \$47,699.13 and costs in the amount of \$727.15.

8. Based on these findings, the Court recommends the district court order the following:

A. The Commissioner's Report is approved and accepted.

B. The sale of the Property as described above and in Exhibit A to GCP or its nominee for \$1,500,000.00 is hereby confirmed.

C. The Commissioner is directed to execute and deliver documents transferring title for the Property to GCP or GCP's nominee within thirty-five (35) days after the Order is filed.

D. Except for rights and title derived through the recordation of the documents conveying the Property to GCP or its nominee, Plaintiffs and all persons claiming by, through or under Plaintiffs are forever barred of and from any and all claims, rights, title and interest in the Property.

E. Upon the recordation of the documents conveying the Property to GCP or its nominee, GCP or its nominee shall be entitled to immediate and exclusive possession of the Property, and a writ of possession shall issue upon presentation as ordered herein.

F. The sale proceeds shall be disbursed or credited in the following order:

(i) To the Commissioner, \$5,650.00 in payment for services rendered and expenses incurred as Commissioner;

(ii) To GCP, payment of \$4,239,195.83 for principal, interest, late charges, attorneys fees' and costs, plus additional per diem interest of \$1863.75 to the date of the judgment.

G. Upon disbursement of the sale proceeds as directed, the Commissioner shall be discharged from further duties with respect to the Property as Commissioner for this Court.

H. A deficiency judgment in favor of GCP and against James Richard McCarty and Victoria L. McCarty, jointly and severally, for the difference between the amounts owed to GCP, as determined herein, and the sale proceeds applied thereto, shall be entered upon presentation.

DATED: Honolulu, Hawaii, April 20, 2011.




Kevin S.C. Chang
United States Magistrate Judge

EXHIBIT A

Description Of Real Property

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Number 8130, Land Commission Award Number 7714-B, Apana 8 to M.

Kekuaiwa and Royal Patent Number 4586, Land Commission Award Number 5768, Apana 4 to Kalalau) situate, lying and being at Honokohau, Kaanapali, Island and County of Maui, State of Hawaii, being LOT NUMBER TWO (2), and thus bounded and described:

Beginning at a 1 ½ inch pipe at the West corner of this lot on the edge of Honokohau Stream, the coordinates of which referred to Government Survey Triangulation Station "MALO" being 468.29 feet South and 10,038.15 feet East and running by azimuths measured clockwise from true South:

1. Along the high water mark of Honokohau Bay to a ¾ inch pipe, the direct azimuth and distance being
212° 07' 00" 312.00 feet;
2. 319° 27' 00" 297.45 feet to a 1 inch pipe;
3. 60° 30' 00" 6.48 feet along Land Commission Award 5927, Apana 1, to Palaualelo, to a 1 inch pipe;
4. 339° 17' 00" 22.55 feet along same, to a cross on rock;
5. 58° 34' 00" 117.10 feet along edge of road, to a 1 inch pipe;
6. 77° 04' 00" 138.18 feet along same to a 1 inch pipe;
7. 121° 36' 00" 149.15 feet to the point of beginning and containing an area of 1.52 acres, more or less.

EXCEPTING those portions within Parcels 2 (Revision 1) and 2A of the Kahekili Highway Resurfacing Project, as more particularly described in the Final Order of Condemnation recorded in the Bureau of Conveyances as Document No. 2009-197306.